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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4278

12 **OSVALDO J. SOLIZ**
13 **52-137 Nelson Ave.**
14 **Coachella, CA 92236**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Pharmacy Technician Registration No. 83815**

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On November 19, 2012, Complainant Virginia Herold, in her official capacity as
19 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 4278 against Osvaldo J. Soliz (Respondent) before the Board of Pharmacy.
21 (Accusation attached as Exhibit A.)

22 2. On June 12, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician
23 Registration No. 83815 to Respondent. The Pharmacy Technician Registration was in full force
24 and effect at all times relevant to the charges brought in Accusation No. 4278 and expired on
25 May 31, 2012, and has not been renewed. This lapse in licensure, however, pursuant to Business
26 and Professions Code section 118, subdivision (b) and 4402, subdivision (d) does not deprive the
27 Board of its authority to institute or continue this disciplinary proceeding.

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1 3. On November 28, 2012, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 4278, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)
4 at Respondent's address of record which, pursuant to California Code of Regulations, title 16,
5 section 1704 and Business and Professions Code section 4100, is required to be reported and
6 maintained with the Board. Respondent's address of record was and is 52-137 Nelson Avenue,
7 Coachella, CA 92236.

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c) and Business & Professions Code section 124.

10 5. On December 4, 2012, the domestic return receipt of the aforementioned
11 documents sent by certified mail was returned by the U.S. Postal Service, signed by Respondent
12 as received on November 30, 2012.

13 6. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the
15 respondent files a notice of defense, and the notice shall be deemed a specific
16 denial of all parts of the accusation not expressly admitted. Failure to file a notice
17 of defense shall constitute a waiver of respondent's right to a hearing, but the
18 agency in its discretion may nevertheless grant a hearing.

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon
20 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
21 No. 4278.

22 8. California Government Code section 11520 states, in pertinent part:

23 (a) If the respondent either fails to file a notice of defense or to appear at
24 the hearing, the agency may take action based upon the respondent's express
25 admissions or upon other evidence and affidavits may be used as evidence
26 without any notice to respondent.

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4278, finds that

1 the charges and allegations in Accusation No. 4278, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for
5 Investigation and Enforcement is \$1775.00 as of February 4, 2013.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Osvaldo J. Soliz has
8 subjected his Pharmacy Technician Registration No. 83815 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
11 Technician Registration based upon the following violations alleged in the Accusation which are
12 supported by the evidence contained in the Default Decision Evidence Packet in this case.

13 a. Respondent has subjected his license to discipline under Code sections
14 490 and 4301, subdivision (l) in that on December 2, 2011, in a criminal proceeding entitled *The*
15 *People of the State of California vs. Osvaldo James Soliz*, in Riverside County Superior Court,
16 Case Number INM1105932, Respondent was convicted on his plea of guilty to violating Penal
17 Code (PC) sections 452 subdivision (d), unlawfully setting fire to and causing to be burned
18 property of another, a misdemeanor that is substantially related to the qualifications, functions,
19 and duties of a licensed pharmacy technician.

20 b. Respondent has subjected his license to discipline under Code section
21 4301, subdivision (f), in that on June 29, 2011, he recklessly burned books in an open field that
22 started a bush fire within seconds, in utter disregard for his safety and that of the community and
23 of other possible consequences, which constitutes an act involving moral turpitude and
24 corruption.

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1 **ORDER**

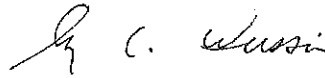
2 IT IS SO ORDERED that Pharmacy Technician Registration No. 83815, heretofore
3 issued to Respondent Osvaldo J. Soliz, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on April 17, 2013.

9 It is so ORDERED ON March 18, 2013.

10 BOARD OF PHARMACY
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 
14 By _____
15 STANLEY C. WEISSER
16 Board President

17 70682867.DOC
18 DOJ Matter ID:SD2012703153

19 Attachment:
20 Exhibit A: Accusation
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Exhibit A

Accusation

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Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4278

13 **OSVALDO J. SOLIZ**

14 **52-137 Nelson Ave.**

15 **Coachella, CA 92236**

A C C U S A T I O N

16 **Pharmacy Technician Registration No. 83815**

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about June 12, 2008, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number 83815 to Osvaldo J. Soliz (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on May 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

5. Section 4300, subdivision (a), of the Code states that every license issued may be suspended or revoked.

STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

8. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

• • • •

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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1 (1) The conviction of a crime substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. The record
3 of conviction of a violation of Chapter 13 (commencing with Section 801) of Title
4 21 of the United States Code regulating controlled substances or of a violation of
5 the statutes of this state regulating controlled substances or dangerous drugs shall
6 be conclusive evidence of unprofessional conduct. In all other cases, the record
7 of conviction shall be conclusive evidence only of the fact that the conviction
8 occurred. The board may inquire into the circumstances surrounding the
9 commission of the crime, in order to fix the degree of discipline or, in the case of
10 a conviction not involving controlled substances or dangerous drugs, to determine
11 if the conviction is of an offense substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. A plea or verdict of guilty
13 or a conviction following a plea of *nolo contendere* is deemed to be a conviction
14 within the meaning of this provision. The board may take action when the time
15 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
16 or when an order granting probation is made suspending the imposition of
17 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
18 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
19 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
20 information, or indictment.

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22 **REGULATORY PROVISIONS**

23 9. California Code of Regulations, title 16, section 1769, states:

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25 (b) When considering the suspension or revocation of a facility or a
26 personal license on the ground that the licensee or the registrant has been
27 convicted of a crime, the board, in evaluating the rehabilitation of such person and
28 his present eligibility for a license will consider the following criteria:

- 29 (1) Nature and severity of the act(s) or offense(s).
- 30 (2) Total criminal record.
- 31 (3) The time that has elapsed since commission of the act(s) or
32 offense(s).
- 33 (4) Whether the licensee has complied with all terms of parole,
34 probation, restitution or any other sanctions lawfully imposed against the licensee.
- 35 (5) Evidence, if any, of rehabilitation submitted by the licensee.

36 10. California Code of Regulations, title 16, section 1770, states:

37 For the purpose of denial, suspension, or revocation of a personal or
38 facility license pursuant to Division 1.5 (commencing with Section 475) of the
39 Business and Professions Code, a crime or act shall be considered substantially
40 related to the qualifications, functions or duties of a licensee or registrant if to a
41 substantial degree it evidences present or potential unfitness of a licensee or

1 registrant to perform the functions authorized by his license or registration in a
2 manner consistent with the public health, safety, or welfare.

3 **COST RECOVERY**

4 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
5 administrative law judge to direct a licensee found to have committed a violation or violations
6 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(December 2, 2011 Conviction for Recklessly Causing Fire to Property on June 29, 2011)**

10 12. Respondent has subjected his license to discipline under Code sections 490 and
11 4301, subdivision (l) in that he was convicted of a crime that is substantially related to the
12 qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as
13 follows:

14 a. On or about December 2, 2011, in a criminal proceeding entitled *The*
15 *People of the State of California vs. Osvaldo James Soliz*, in Riverside County Superior Court,
16 Case Number INM1105932, Respondent was convicted on his plea of guilty to violating Penal
17 Code (PC) sections 452 subdivision (d), unlawfully causing a fire of property, a misdemeanor.

18 b. As a result of the conviction, on or about December 2, 2011, Respondent
19 was sentenced to three years summary probation and ordered committed to the custody of the
20 Riverside County Sheriff for 20 days with credit for two days served and another two days
21 pursuant to PC section 4019. Respondent was also ordered to pay \$1,204.45 in fines, fees, and
22 restitution.

23 c. The facts that led to the conviction are that on or about June 29, 2011,
24 Respondent was reported as lighting a bush on fire in Coachella, California. A responding officer
25 from the Riverside County Sheriff's Department saw Respondent kicking dirt into the fire. When
26 asked what he was doing in the area, Respondent admitted to burning satanic books from his past
27 in order to cleanse himself. Respondent also admitted to choosing the bush area because that was

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1 where he and his friends used to gather in the 1980's. Officers from the California Department of
2 Forestry and Fire Protection arrived and extinguished the fire.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Commission of Any Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or**
5 **Corruption)**

6 13. Respondent has subjected his license to discipline under Code section 4301,
7 subdivision (f), in that on or about June 29, 2011, he recklessly burned books in an open field
8 that started a bush fire within seconds, in utter disregard for his safety and that of the community
9 and of other possible consequences, which constitutes an act involving moral turpitude and
10 corruption, as detailed in paragraph 12, above.

11 **PRAYER**

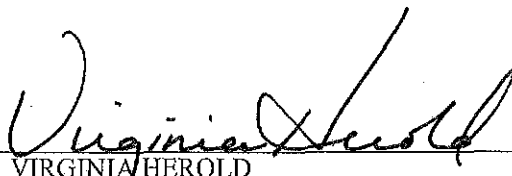
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician Registration Number 83815,
15 issued to Osvaldo J. Soliz;

16 2. Ordering Osvaldo J. Soliz to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

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23 DATED: 11/19/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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